THE INSTITUTION AND GOVERNMENTAL RELATION SYSTEM OF THE MINISTER IN HUNGARY

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The explanation of the position of the minister, his place and role within the state guidance, particularly the public administration, the survey and analysis of the character, tools and methods of the ministerial management is obviously an important, not to be neglected element of those examinations which aim the modernisation of the state and political life and public administration. In a given case not only those changes deserve attention, which have taken place in the position, organisation, tasks, functions and relation mechanism of the minister and ministry during the history – as they are one of the oldest elements of public administration, but we ought to survey that question too that the alteration in the life of contemporary society and state, especially the technological-sctientific revolution, the mutual dependence between the countries and national economies systems what kind of new solutions indicate and what changes are required concerning the public administration and within this the ministerial level managment system as such. Beyond the mentioned general aspects the role of the minister and ministerial system, the contents and substantial factors of management and the survey of ist elements are considered as actual and urgent, moreover those reform processes, which aim the significant improvement of the social ans state democratisation taking place in the socialist countries, necessarily involve changes in the role and structure of public administration, its means, including the ministerial institutions too. As we survey the institution of the minister, we understand that this problem consists of several and interrelated factors, namely in the politics, organisation science, economics, sociology, politology and legal sciences. According to the nature of the problem we are particularly concerned of the political and law aspects of this sphere of problems among all other approaches of it, i. e. the changes of the ministerial sphere of competence is surveyed mainly in the framework of the state organisation and the public administration, however, we strive to recognize the social, political, economic, etc. sides of the problem too.

I. The institution of ministry, its general questions and development trends

It is well known that the roots of the ministerial institution go back to the age of absolutism, the time of the creation of bourgeois states. Actually that was the development period, when the outlines of the ministerial role, the ministerial independence and management, especially the ministerial responsibility were drawn, its characteristic features were established and formed. This development trend went along with the appear ance of the bourgeois states, when unambiguously were created and constitutionally formulated those basic institutions, which were aimed to promote and help the position, independence and responsibility of the minister in the state system. In the classical period of the bourgeois development the basic solutions concerning the ministerial institution – political and legal regulations – were created, a significant part of them still prevails, although on one hand with the appearance of the socialist countries a different rule and practice were applied compared them to the solutions produced by the classical bourgeois development, on the other hand the scientific-technological revolution, the establishment of the mutual dependence of the states require a revaluation of the traditional features of the ministerial institution.

The evaluation of the position and role sphere of the minister requires the survey of closely connected and even mutually necessary factors. Such factors are

1. The extent of the ministerial independence and the activity sphere of the minister;
2. The ministerial responsibility;
3. The organisational aspects of the ministerial institution.

1. The extent and effectiveness of ministerial independence are depending on several aspects. Thus the ministerial independence is remarkably influenced by the social and political order of the given country, its administrative structure, the system of the political setup, the relevant constitutional and other legal regulations, traditions, actual national conditions, etc. Followingly the role of the minister as institutions, the extent of the ministerial independence may significantly differ from each other even in countries of identical system. The development of the extent of ministerial independence may significantly depend on that fact too whether the minister as the head of each ministry is to be considered as a single responsible head of the given public administrative branch, who is entitled to all competences given to that ministry, or he is just a leader, who possesses and practices only a certain part of the competence of the ministry, albeit the most important and fundamental rights belong to this sphere of competence. As it is well-known, both approach can attract arguments for and against.

a) Connected to this subject we refer only as a sign to that fact that for the mentioned first view seems to be supported by the argument that e. g. in the domestic law regulations the legal rules arranging the sphere

of activity and competence of each branch (resolutions by the Council of Ministers) concern the sphere of activity and competence of the minister, not the ministry. The other approach, accepted by us too, starts out of that reality, i. e. sociological fact that the activity and competence sphere of the minister does not and cannot include the whole activity of the ministry as far as the competence sphere and rights, licences of the organisation are concerned, because in a certain way – at least from the aspect of organisational sociology – the minister as the head of the ministerial organisation is a part of it himself. Beside we ought to consider that a certain division of labour, therefore a certain division of competence prevails between the minister and the ministerial organisation, its units and parts. This fact has been formulated by the Hungarian authoritative regulations too, as the Act I of 1981 on the rules of public administrative procedure makes a general distinction between the minister on one hand, on the other hand the ministry as independent competence level.

In that way the development of the ministerial independence is significantly influenced by the circumstance that the ministerial function is a political, or in narrower meaning public administrative function to a certain extent. It is known that in the classical period of the bourgeois development the *unity of the political and public administrative government* had prevailed in a powerful way, which nave a foundation for a relatively wide sphere of the ministerial independegce. In that stage of development the framework and movement sphere of the ministerial independence had been determined by the extent of its dependence from the head of state, the dependence of the executive power from the head of state and the parliament on one hand, the division of labour within the structure of executive power, especially the way and nature of the division of labour among the government and its ministers. From the end of the 19th century ths picture had been altered in a way namely with the appearance of political parties the earlier, more or less existing unity of the political and public administrative government has suffered a certain rupture and a multiple and complex system of relations between the political parties and the state has been created. This system heavily influences the institution of the ministerial independence, the role of the minister and the activity sphere of the ministerial leadership. Followingly it is reasonable to get into some details on the development of the relations between the political parties and the bourgeois state and its institutions, some aspects of the relation in the ministerial independence and activitv sphere and the most important between the Party and the socialist state, especially concerning the changes momentum which determine the changes and developments of the ministerial independence and sphere of role.

The recent multiple and far-reaching relations and mutual effects between the capitalist state and the political parties are the results of a long historical process. Surveying the system of relations in a simplified way two main periods of development can be distinguished:

– the development period preceding the Second World War; the relation between the political parties and the capitalist state can be characteri-

zed such way that gradually those forms and methods were emerging which made possible that the political parties influence the several different areas of state activity. In this period of development this relation as whole can be characterized as a *functional relation*, which succeeded primarly through the participation of political parties in the elections.

– The development period after the Second World War; Actually this was the period when the *institutional* framework of the participation of political parties in the life of the state has been arranged, namely both the constitutions adapted in this period and the special legal regulations have contained detailed rules on the political parties. Beyond this fact the activities of political parties are not curtailed at all to the elections, but their influence appears and powerfully expresses itself in the operations of the Parliament and the government as well. This influence – at least from a political aspect – has quite decisive importance considering the composition of the government, the directions of its activities and their substantial contents. In the relation and aspect examined by us the powerful incursion of political parties into the state mechanism means that the prevalence of ministerial independence is decisively influenced – in a political sense – the adherence to some political party, the program of the given political party strongly influences his sphere of activity too. Consequently in this period of bourgeois development the presence of political parties and their certain decisive role in the state system is such a factor, which should be considered while examining the constitutional framework of ministerial independence.

Meanwhile we have to indicate that in the contemporary bourgeois development not only the influence of the parties on the state life should be taken into consideration, but have to count on an adverse process too, which operates in the same time. Namely the *capitalist state also intervenes into the life of the parties*, when it ensures a legally regulated institutional framework for their operation. At least the state strives to carve out some kind of supervising role for itself – institutionally too. This fact is supported by the examination of those legal regulation material – usully on the level of acts – which are concerning parties. Even without a more detailed analysis of the legal rules involving parties it could be ascertained that the capitalist state in not only declaring the rules between the political parties and the state, but it intends to determine and regulate some requirements for political parties, the system of financial sources of the parties, etc. This controversial relation and certain mutual effect between the political parties and the bourgeois state naturally have their impact on the operation of the government and on the miniszterial independence and sphere of role as well, particularly by that fact that in this complex system of relations the frameworks are more or less determined in depth and details concerning the operation of political parties or at least this is realized in relation of the state structure.

Naturally the relation, the mutual link between the party and the state, including the relation between the party and the public administration appears in the socialist countries too. This relation and mutual effect

appear in the political system of the socialist order too. The specialty and distinctive feature of the relation between the Marxist-Leninist Party and the socialist state that in the socialist society the Party fulfills a dominant leadership role declared by the constitution too in relation to the whole society, therefore to the state organisation as well. This dominant leadership role is necessarily a political one and it is realized by such instruments.

When we survey the political features of ministerial independence among socialist conditions, we have to survey primarily the development of the relation between the Party and the government (Council of Ministers), all the more because this relation has ultimately decisive importance concerning the political framework of the ministerial independence. However the mentioned constitutional declaration of the dominant role of the Party does not mean a legally instituted hierarchy between the Party and the state and social organs, entities. The leading role of the Party prevails through political political channels instead of the usage of law. *The activity of the Party takes places in the framework of the constitution too.* Concerning the relations between the Party and the government, including the minister it is reasonable to call the attention to the following:

The Council of Ministers as a supreme organ on the peak of the public administrative structure possess a distinguished place in the political realisation of those *decisions* which were accepted by the Party, in the *organisation of carrying out these resolutions.* However, according to our view this does not mean that the role of Ministerial Council is limited exclusively to the role of executive operations. There is a much more complex and more difficult mutual relation and effect as the political decisions are further shaped by the events in the process of implementation, enrichened with new elements, beside the fact that the acitvity of the Council of Ministers – among others the analysis of the implementation experiences – has a feedback to the leading activity of the Party, within certain limits influences and shapes it.

Another remarkable momentum is the *personal* relation between the leading organs of the Party and the Council of Ministers. As it is known in the course of the socialist development this latter one is realized in various forms, it is still such a real feature which cannot be and should not be ignored. This above-mentioned personal relation is realized in the fact that the leading members of the government are in the same time also members of the supreme organs of the Party (Cental Committee, Political Committee, which actually aims to give further support to the leading role of the Party on the personal matters too. One of the important questions of the development of the relation between the top organs of the Party and the government is the *division an dseparation of the tasks and function* between them. As the history and its experiences show in the socialist development the various periods have produced the most problems just abont this one. We do not intend to go in details concerning the specific and different ways of solutions of each stage of the socialist development, we only refer to the fact that in this aspect it is reasonable to avoid *two* extremities, on one hand such a view that the Party intends to limit its leading role exlusively

to exert its theoretical influence, on the other hand to take away the borderline netween the Party and the government. Followingly the appropriate approach seems to be that the mentioned bodies are working *parallel in the framework of their tasks, responsibilities, aims.* This approach requires the proper co-operation, furthermore their independent operation concerning the specific nature of their tasks and functions should be ensured.

Concerning the experiences in this field, considering the theoreticaol-political views, we have to emphasize the following aspects:

– even today it is an actual task the *more powerful separation* of the competence sphere of the leading organs of the Party and the government;

– we have to strive for the elimination of the still existing *parallel decision practice* and the elimination of the meriing of political responsibility spheres;

– the government should take part in the preparation of the very significant political issues and generally in the formulation of politics as well;

– it should be achieved that *in the decision-taking the specific approach of the decision-maker should prevail much stronger than today.* This naturally depends on the preparation of decision too, i. e. which aspects of the decision are stressed by the policy-makers, to what extent the character, task and the features, which are due to the place in the political hierarchy are taken in consideration concerning the decision forum.

Considering the mentioned and further aspectrs of the relation between the Party and the government it could be reasonable to surveywhether in the future the Party guidance of the institution of the Minister should not be done primarily thourgh direct ways, but thourgh the government indirectly.

2. The institution of ministerial independence is closely connected with the institution of *ministerial responsibility.* In the history the institution of ministerial responsibility took shape in the initial stage of the bourgeois development. The conditions of the prevalence of this institution and the system of its constitutional and legal regulation were constructed in the *parliamentarian* governmental system with a comprehensive character. The appearance of the political parties has exerted a powerful influence on both the development of the ministerial independence sphere and the ministerial responsibility, the functioning of this responsibility form is connected several ways to the operation of political parties, even in such case when the implementation of the ministerial responsibility has constitutional and characteristically law-regulated elements. Although we do not intend to analyze the guestions of constitutional and other regulations concerning the institution of ministerial responsibility we wish to survey some general problems which are regarded important considering the sphere of problems surveyed by us.

The ministerial responsibility as a characteristic form of responsibility could be interpreted primarily as a *political* responsibility. This political responsibility means the responsibility of the minister to the Parliament; in this aspect he is responsible for the whole of his activity. The

foundation of the implementation of this responsibility is actually a certain appropriate answer or behaviour concerning to these expectations in *politics* and *effectiveness*. The political responsibility of the minister to the Parliament may appear in *two* different ways: on one hand in the form of the *personal* responsibility of the minister, on the other hand in the form of *collective* responsibility is realized by the mediation of the responsibility of the government to the Parliament.

In the course of development several forms of the implementation of the responsibility of the minister to Parliament have taken shape. Without the claim of completeness we may refer to the fact that the system of interpellation is obviously such an institution, which may serve as a basis for the implementation of the political responsibility of the minister. For example if the Parliament does not accept the answer of the minister to a question, this can be a reason and it does serve as a reason in some countries to the resignation of the minister. An important institution of the political responsibility of the minister to the Parliament is the *proposal for a vote of non-confidence censure*. On the base of the proposal for censure the withdrawal of confidence usually happens when there are objections concerning the effectiveness of the ministerial activities from political or other special aspects.

The political responsibility of the minister is separated from the *legal* responsibility of the minister. Its characteristic feature is a breach of law. When we discuss about the legal responsibility of the minister as a special legal responsibility form from certain view, we may start out of the fact that the situation of the minister in the state structure is different from the general responsibility forms of law, it required to construct a *special responsibility form*. This particular responsibility basically appears in the special regulation system of the criminal and disciplinary responsibility of the minister. Therefore special responsibility rules are arranged concerning the right to raise an accusation against him, the forum system of responsibility, procedural order, etc. We have to mention that the legal responsibility of the minister included his eventual responsibility connected with the arrangements of individual official matters too.

We have to emphasize that the political and legal responsibility of the minister exists only in connection with his official activities indeed. For objectionable deeds as private man he is responsible according to the general legal regulations. Partly the ministerial responsibility, partly this latter one are generally prescribed by highlevel legal rules, even if the referred regulation shows significant differences in each country due to its social and political order, furthermore to the different character of the governmental systems. In the development of the ministerial responsibility beside the implementation of the special legal responsibility arrangements or with it more and more importance is acquired by the *responsibility for results* beside the political responsibility. This is understandable too because of the more and more powerful *political involvement* of the ministerial leadership activities and in the same time its *professionalisation* promotes this responsibility form. However, we have to underline the fact that it

would not be appropriate at all to survey the responsibility of the minister for the results only from the aspects of political and professional requirements, but we have to analyze the *system of means* too, which is able to ensure the realization of the expectations on the level of ministerial management. Actually this is the point where the ministerial responsibility is directly connected to the ministerial independence or better to say to its content, namely that every kind of responsibility, therefore the ministerial responsibility is also can be implemented only in case of existence of certain material and legal means.

3. Beside the development of the ministerial independence and responsibility we have to mention shortly the *organisational* aspects of the institution of the minister and the main trends prevailing in this sphere.

When we survey the development of the organisational components of the ministerial institution, it can be asserted generally that this sphere is one of the most dynamically changing element of the ministerial management and role sphere. This latter is due to several factors Without the claim of completeness we may refer e. g. to the fact that the earlier mentioned trend of politization and professionalisation of the public administration in the *bourgeois* states have caused a certain kind of division of the public administration. Furthermore, the strengthening of the service character of public administrative activities beside the traditional public administrative organs led to the ceration of new types organs and entities which provide both public administrative and service functions.

Finally the powerful intervention of the capitalist state into the economic life has brought along an inner differentiation of the public administrative structure, the state sector grew more powerful, although in the last years we can witness the emergence of opposite trends as well.

We can trace well the development of the ministerial organisation in the socialist countries too. This new trend appears generally in the public administration: namely the collective leadership forms and structures (governmental committees, different interministerial committees, etc.) grew stronger in their role, furthermore in the ministerial management the functions and competence sphere of the collegial organs, especially the ministerial councils and other similar entities improved, got extended.

It is well-known that the bourgeois development has created several types of the ministerial institution and ministerial organisation.

This latter is mentioned here only shortly, namely a couple of characteristic solutions are mentioned by us. The substance of one of these solutions is that the minister is the member of the cabinet and in the same time he is the leader of a given ministry as well. This form is obviously a result of the French development. Differently, the English development led to a multi-level ministerial system, in which the minister is not the member of the government in every case by far, or not even the leader of the ministry. Finally we have to refer the very significant and more and more powerful role of the so-called *autonom authorities and structures* in the ministerial management, which have caused significant changes in the organisational system of the ministerial institution. Consequently in some

countries (Sweden, Finland) the increased weight and role of the autonomous authorities – particularly in the sphere of social affairs and education – directly caused the duplication of the system of ministerial management, at least in that meaning that the actual ministerial apparatus which prepares the ministerial decisions, is strongly separated from the professional apparatus, which carry out these decisions – actually this latter are the mentioned autonomus structure and authorities.

Abother important element of the organisational side of the ministerial institution is the *inner* organisation of the ministry and the development of the division of inner tasks and competences. In the bourgeois countries the *political* and the *public administrative (official)* management of the ministries are separated more-less from each other, i. e. generally the *relation with the Parliament* appears as an extra element, as a special function. Consequently the minister as a primarily political factor generally has an administrative deputy and another deputy, whose main responsibility is to maintain relations with the Parliament. Although in the socialist state development – due to the different character of the state machinery – inside the ministerial management similar division of labour has not emerged unambigously and consequently, inside the ministerial management more and more powerful is the claim and need to introduce a public administrative state secretary position (or deputy minister function), and similar position to keep a steady relation with the organ of people's representatives We can experience such steps already in some socialist countries in the way of constructing for example a function of ministerial general secretary or office head, etc.

Another important element of the ministerial inner organisation is the implementation of the principle of *collegiality* in the management of the ministry and the construction of the appropriate organisational forms in order to achieve this. Otherwise this trend can be observed in both the capitalist and socialist countries – although in different form and depth. Of has an effect on the traditional interpretation of the one-man ministerial corse this leadership or even on the conceptual elements of the institution of ministerial responsiblity too. Finally we mention that the organisational features of the ministerial institution are strongly influenced by the *co-ordinatiou* mechanisms in the public administration, furthermore by the increase of role and weight of *consultative* organs. This is largely connected to the growing importance of the *inter-branch* problems and the approach to the administrative processes with emphasis on the system and the complex character of them. This process obviously can be traced in both the capitalist and the socialist state organisations, several concrete organisational forms were created.

The development trends which were outlined in a simple form and the applied solutions – each and all – obviously require the examination of the domestic solutions, drawing the appropriate consequences, considering the characteristics, traditions of the Hungarian state development, moreover the requirements of the modernisation of our political system generally.

II. The governmental relation system of the minister

The ministerial activities are extensive and it is realized in the framework of a multiple relation system. This system of relations from one aspect can be connected to the political system, its components, other aspects prevail within the state organisation. Naturally the ministerial activities have such elements which involve the whole society or some parts of it. The components, relations of the ministerial relation system contains a special feature, moreover depending on the given sphere the methods and means are also different – through them this system of relations takes shape. In this place we cannot survey the whole ministerial system of relations. As it follows we seek the answer: how the government relation system of the minister is developing, what are the characteristic features of this system of relations, what is the recent situation like, what kind of possible trends of its improvement exist. In order to show the conceptual elements of the governmental relation system of the minister, we have to deal shortly with the interpretation of the governmental activity itself.

When we discuss about the terminological elements of the governmental activity, this activity can be surveyed from both the *object* and the *subject* side. The object approach is looking for the answer to the question, *what kind of activity* can be interpreted as governmental activity, in other words, what are the most important criteria of the governmental activity. The subject approach is different: it surveys the governmental activity by the definition of the categories of those organs which conduct governmental activities, i. e. it intends to give answer to the question: *which organs* do government activities. Naturally both approaches have their own merits, however the examination of the characteristic features of the governmental activity requires the simultaneous application of the above-mentioned approaches. As it is known, during the history the governmental activity have changed and developed in the framework of the state activity, as one of its parts. The bourgeois authors usually regard the governmental acticity as a certain, generally most important field, phere of the state activity. Accordingly the governmental activity is connected to the operation of either the *head of state* or the *legislation* (Parliament) or the *executive power* (government) or *all of these combined*. Parallel with the appearance of the political parties and their growing role in the life of the sociaty ans state such ideas also appeared which interpret the governmental activity as an activity which goes beyond the state activity, respectively they refer to such elements, which oocur outside the framework of the state activity. Indeed, if *we interprete the governmental activity in a wider meaning* it can be hardly doubted that *it has an aspect which goes beyond the state activity.* For example, it is obvious that in the socialist countries the leadership role of the Party is one or even decisive element of the governmental activity. In that regard the *governmental activity can be considered as the most significant and most extensive activity sphere of the management of the society,* which possess both elements of political mechanism and state organisation.

Beside this widely interpreted sphere of notions of the governmental

activity there is another, narrower sphere of notions too, namely the *governmental activity conducted by the state organs as a special form of state activity.* The governmental activity in this sense is that sphere of state guidance activity, which determines the most important tasks and aims of the state, the means, methods and pace of the realization of these tasks and aims, ensures the necessary material and personal conditions, supervises and controls the implementation of the planned tasks and aims. The above-mentioned criteria of the governmental activity of the state also indicate that this kind of state activity is to be considered as the *supreme level* state activity. Consequently the practice of the governmeantal activity belongs to the tasks of the supreme state organs. This latter aspect, however, leads us to the survey of the *subject* side of the governmental activity.

It comes from the character of the governmental activity of the state that in the practice the decisive role belongs to the *supreme state power and representative organ (Parliament), the head of the state, or the entity practicing the functions of the head of state* (Presidium, State Council, etc.), furthermore the *government* as the top executive-authoritative organ. Without doubt these are the organs which carry the governmental activities. Actually the relation among them can give answer to the question concerning the governmental form of the state too.

However, a question comes out whether the mentioned top state organs can be considered as the *exclusive possessors* of the governmental activity ? The answer given to this question presumes an examination of the state structure and characteristics of the given state. If we examine this question among the conditions of socialism, then above all the qualification of the activity of the *governmental committees* deserves attention.

We known that the Council of Ministers may create *government committees* for the provision of certain tasks. The governmental committees operate in a competence sphere transferred by the Council of Ministers. In the activity of these committees that element can be distinguished which aims the co-ordination and guidance of the ministeries and main authorities. In the same time in the ectivity of the governmental committees – although with different weight and ratio – there are some governmental elements, which go beyond the narrower management of the ministries and authorities with national competence. However, this latter element is connected to the transferred character of their competence too. Consequently in the framework of theit competence the governmental committees can be listed among those organs which provide certain governmental activities.

The subject side of the governmental activity is connected with a further problem, namely to the interpretation of *activity of the ministries* from the view of the governmental activity. Considering this question there is no uniform opinion in the literature, either. Followingly in a wide sphere there is such a view wich does not consider the activity of the ministries as a governmental activity. However, there is another opposite view too, which startsout of the fact that the head of the ministry is a member of the government, therefore largely the activity of the ministry

is to be considered as a governmental activity. Between these two extreme view there are several views in between. Their point is that only a certain, qualified field of the ministries' activities can be accepted as a governmental activity. This way the ministry would be such an organ, which provides actually "dual" kinds of activities, namely governmental and non-governmental activities. According to our view in connection to the listing of ministries to the governmental or non-governmental organs we ought to survey several circumstances. The main initial point seems to be the fact that the ministries subordinated to the government fulfill their tasks in the framework of a certain branch or function. This way the limited character of the competence of the ministry and the characteristic feature of its activity lead us to the consequence that the ministries cannot be qualified as governmental organs in the real meaning of the word. This latter naturally does mot mean that the ministries' activity is not connected very significantly with the governmental activity litself. This point can be observed particularly in the process of preparation of the governmental decisions, as the ministries have a very important role in the system of preparation of decisions.

Another problem is the estimation of the activity of the *minister*. In a given case we have to consider which kind of activity of the minister is examined. As a member of the government the minister undoubtedly take part in the governmental activity, although it is also obvious, that the the governmental activity as such ultimately is practiced by the government as an entity, not by its individual members. In the same time the minister's activity towards the given administrative branch, his management activities and the aspect of his operation to lead the work of the ministry as an organisation. cannot be taken as governmental activities. Naturally the above-mentioned facts do not include such case when the government explicitly authorizes one of its members to provide certain governmental activity (e. g. the institution of *government commissioner*[+]. In such case the provison of the governmental activity actually takes place in a transferred competence sphere, i. e. its base is the fact of the delegation instead of the character and sphere of those rights and licences which belong to the minister anyway.

Followingly such consequence can be drawn that the governmental organs are the supreme state power and representative organ (i. e. the *Parliament*) the *Presidential Council* and the *Council of Ministers* and the appointed *governmental committee*. Followingly the governmental relation system of the minister should be examined from these three main aspects.

1. The relation of the minister to the Parliement, his responsibility to the Parliament is probably the oldest and most important feature of the ministerial sphere of competence and independence. This latter is relevant for the Hungarian development indeed.

It is known that in Hungary the legal status and the institution of ministerial responsibility is regulated initially by the Act III of 1848 with a comprehensive character, it was actually constructed by this Act. This regulation system in the whole possess the general characteristics of the bour-

geois regulative solutions, although some of its features represent peculiar solutions. Without going into details of the regulations – which are elaborated by the domestic law literature, here we refer only to the fact that the law regulation in 1848 had emphasized the political and constitutional responsibility of the minister, when it had declared the responsibiluty of the minister for every such behaviour or regulation, which violates the independence of the countra, the constitutional guarantees, the laws, the personal freedom and the sanctity of the property. The Act had referred to the political responsibility of the minister to the Parliament too when it had declared that the minister upon the request of the Parliament is obliged to be present and give answers, furthermore to make available official documents for the Parliament. Although the regulation directly did not prescribed it, but such practice was introduced and accepted that the Parliament may ask questions to the minister, who is obliged to give immediate answer or may answer it in the next session.

Although during the latter development phase the regulations concerning the relation of the minister to the Parliament and his responsibility to the legislative organ undoubtedly went through important changes – both in the times of dualism and between the two world wars, however, we can state that in the whole development period, even with some corrections till. the acceptance of the Constitution in 1949 besically the mentioned legal regulations of 1848 were valid. The relation of the minister to the Perliament, his connection with this organ and his responsibility are determined by the text of the Act XX of 1949 and its modification, the Act I of 1972 and its executive orders, especially the Act III of 1973 concerning the responsibility of the minister and state secretary, furthermore the order of the Parliament.

The question emerges what are the components today of the relation between minister and Parliament, which aspects of it require updating and further improvement?

The relation of the minister to the Parliament as the organ of state power and people's representation is determined largely by the general relation between the legislative and executive power. Without the claim of completeness among the socialist conditions the basic aspects of this relation can be summarized as follows: the organs of public administration operate subordinated to the supreme state power and representative organs, according to their guidance: the government and its members are elected by the supreme organs of state power and they are relieved by these organs; the top organs require reports from the Council of Ministers and the members about their activities. Those law regulations which are created by the public administration, can be terminated, changed; the top representative organs guide their work, control the operation of the government and its members. Therefore there is a certain relation of *dependence* between the top state power and representative organs and the Council of Ministers and its members, which includes both the organisational and the operatonali spheres. Naturally in the course of this development this dependence relation and connection do not always prevail, there is no constant harmony

between its declared and actual content, in this aspect there are things to do even these days. However, this fact does not change the principle that the organs of executive power should operate subordinate to the legislative power, which gives guidance to the former.

As we know, concerning the relation between the minister and the Parliament the Constitution rules on one hand that the members of the Council of Ministers are responsible to the Parliament and they are obliged to give a report on their activities, on the other hand it provides that the representative may ask any question from the member of the Council of Ministers in his sphere of competence, and the member of the government is obliget to answer in the session of the Parliament. Moreover, according to the Constitution the members of the Council of Ministers are selected by the Parliament and relieve them according to the proposal of the Presidential Council.

The mentioned constitutional provisions are further elaborated by the law about the legal status of ministers and state secretaries and their responsibilities and the order of the Parliament. Then the Act III of 1973 refers to the fact that the mandate of the members of the Ministerial Council is terminated by resignation, relieve or other way, respectively concerning the election, relieve or resgination of the Council of Ministers the componence sphere of the Presidential Council to substitute the Parliement takes place. Further more the lew also tries to from the responsibility of the members of the Council of Ministers more concretely saying that the members of the government are responsible for the implementation of act and the other legal regulations, for the corporative operation of the Council of Dinisters, for the management of public administrative branches which belong to their competence sphere and for the guidance of the subordinated organs.

The *statutes* of the Parliament establishes further detailed rules concerning the relations of the minister with the Parliament and its committees. Consequently it regulates the participation and speaking rights of the minister at the session of the Parliament, his obligation to answer to the interpellations and questions, his duty to report and the problems of the connection between the minister and the committees of the Parliament. Concerning the latter the statutes declears that in the session of the committee the members of government take part with the rights of contribution, furthermore the committee may turn with its proposals to the competent minister and the report of the minister to the Parliament should be made available for the component committee or committees. The *statutes* establish the answer obligations of the minister too, when it declares that the Parliament and the committee sessions – nameyl the proposals, criticism and questions in these sessions – are entitled toget answer from the minister at the session of after the session.

As the above-mentioned facts sign, a *dual* direction of the relation of the minister to the Parliament can be distinguished: on one hand, the activity of the minister is connected to the Parliament in the form of his *governmental membership*; finally this relation appears in the responsibility

of the government as an entity to the Parliament; on the other hand, the ministerial activity can be related *directly* to the Parliament, realized in the responsibility of the minister to the Parliament and his dependence on the Parliament. If we approach the question from this aspect – which otherwise depends on the nature of the observed sphere of questions – considering the experiences of the domestic regulations and practice it is reasonable to direct the attention as follows:

a) the first question is the election of the minister and his dismissal by the Parliament. In this aspect there is a certain contradicton appears between the regulation and the practice. This is represented by the fact that the Parliament actually deals with the election and relieve of the ministers at its *statutory session*, the so-called continuous election and dismissal is done by the Presidential Council. According to our view this contradiction between the regulation and the actual practice should be solved urgently. This measure is justified not only by legal regulation aspects, but on one hand the further increases of the leading and supervising role of the Parliament towards the ministers, on the other hand it should be secured that the constitutionally established competence sphere of the Parliament prevails completely and without doubt. Of course this latter measure requires a comprehensive overhaul of the general substitution competence sphere of the Presidential Council regarding the Parlia ment too.

b) An important element of the connection of the minister to the Parliament and his responsibility to the Parliament is the institution of *interpellation*. As we mentioned, the institution of interpellation is regulated in details by the statutes of the Parliament through the latest modification, namely it separates the interpellation and the interrogation, i. e. the simple questioning of the minister in some concrete issue. Although in both cases there is a way of raising questions there are significant differencesbetween the interpellation and the simple questioning. The substance of this difference is that in the case of interpellation the Parliament should decide actually whether it accepts the minister's answer or not, the simple interrogation merely serves as an information and consequently on the merit of the ministerial answer the supreme state power and representative organ does not take any stand

According to our opinion the recent weak point of our interpellation regulation and practice is related to the acceptance or rejection of the ministerial answer. Namely the statutes recently rule only the case when the Parliament does not accept the answer given to an interpellation, followingly the interpellation should be made available to a competent parliamentary or other committee which surveys it. However it does not come out clearly from the regulation whether the survey of the committee is limited to the question whether the answer to the interpellation is reasonable or needs some addition or it can be established that the answer is not satisfactory therefore in case of the rejected answer by the Parliament what kind of measure should be taken against the minister including the possibility of his dismissal from his office. We presume that both in the regulation and in the practice today it is an need for an unambiguous rule,

namely that in the case of negative vote of the Parliament on a answer given to the interpellation the calling for responsibility should be considered some way too and in case it is justified, the proposal for his responsibility should be forwarded and submitted to the Parliament. Related to this problem we ought to examine the possibility of introduction of the *non-confidence vote* proposal against the minister too, with the remark that the non-confidence proposal should be applied only against the person of that certain minister and this way it would not mean necessarily the expression of non-confidence against the whole government. The optional introduction of the nonconfidence vote proposal naturally would require the detailed regulation of the submitting, discussing of the proposal, the legal consequences and the exercise of responsibility too.

c) Another important element of the relation of the minister to the Parliament is the *ministerial report* for the Parliament. The duty to report is an obligation for both the government and the ministers who lead certain branches of the public administration.

Among those reports which were submitted by the government it is especially important that particular report which gives account on the implementation of the earlier governmental programme debated by the Parliament. The evaluation of this report by the Parliament includes the activities of the ministers as members of the government. Compared to this general feature it is more individualized and concrete the discussion of each minister by the Parliament. These reports primarily give a chance to evaluate the operations and activities of the minister leading the given administrative branch, although – in an indirect way – they give a glimpse on the activities of the government from a certain aspect as well.

As the ministerial report includes the evaluation of the management tasks of that given minister too, it would be reasonable to regulate by law the questions concerning the eventual negative parliamentary opinion on the report too, including the development of the various forms of responsibilities. Namely, the evaluation of the ministerial report should include not only whether the operation of the minister harmonizes the requirements set up by law, but even more that point: how efficient is the operation of the minister, whether it is satisfactory according to the expectations, how effective is it from social and professional aspects. The consequent prevalence of these latter aspects, however, undoubtedly presumes the judgement on the efficiency of ministerial activities, i. e. it means a certain *result responsibility* too towards the Parliament too. This latter point support that earlier expectation that the regulation solutions concerning the responsibility for results i. e. as political responsibility should be introduced, even the application occasionally of the proposal of non-confidence vote too.

2. The basic regulations concerning the relation of the ministers towards the *Presidential Council* on the basis of constitutional rules on the legal status of the ministers and state secretaries and their responsibilities are determined by the act III of 1973. From the point of the general substitutive sphere of the Presidential Council the mentioned law ascertains

that if the Parliament does not have sessions, the Presidental Council elects, recalls and disposes the ministers. Furthermore according to this Act the ministers are responsible for their work to the Presidential Council as well. Finally the Act refers to the fact that the reporter of the proposal submitted to the Presidential Council is appointed by the Council of Ministers, in the majority of the cases the competent minister is the reporter of the case.

As we have already mentioned, concerning the relations of the ministers to the Presidential Council the general substitutive competence of the Presidential Council has primary importance. Finally this general substitutive competence is the reason why – according to our view – the responsibility and dependence of the minister towards the Parliament does not accomplished to the desired extent. It is especially true concerning the election and recall of the ministers. Moreover in the practice it is not quite clear, what are the mode and form of the ministerial responsibility to the Presidential Council, because the Presidential Council does not the ministers to give account on their responsibilities. We ought to mention that the minister who gives report on some agenda in front of the Presidential Council, essentially represents the government, as the government previously discusses the draft copy of the law decree to be released by the Presidential Council and the discussed and approved draft copy is submitted by the competent minister – together with the minister of justice – to the Presidential Council.

As it comes out from both the regulation and the practice, the relation between the minister and the Presidential Council requires updating on several accounts, because the actual prevalence of the ministerial responsibility actually is not even to be discussed – with the exception of election and recall. In that aspect the solution would be reasonable that the revision of the general substitutive role of the Presidential Council would result that the Presidential Council would create an independent sphere of competence for itself and concerning this role the minister's relation and its elements would be worked out towards the collective body of state leadership.

3. A further important factor and component of the governmental relation system of the minister is the relation ofminister to the Council of Ministers. The relation with the Council of Ministers is regulated by the already mentioned Act III of 1973 and the agenda schedule of the Council of the Ministers.

Among the constitutional regulations that rule is particularly important according to which the Council of Ministers *guides and harmonizes* the activities of the ministries. Furthermore, according to the constitution the ministers lead the branch of state administration of their competence according to the law and the *statutes of the Council of Ministers* and give guidance to the organs subordinated to them. Concerning the former there is a constitutional regulation according to which the ministers are obliged to report their activities to the Council of Ministers too and therefore they are responsible to the Council of Ministers too.

The Act III of 1973 gives further concrete details about the mentioned constitutional regulations. Consequently the Act prescribes that the ministers participate in a certain way at the corporative activities of the government, manage the branches of public administration in the way regulated by the Council of Ministers, may submit proposals to the Council of Ministers and take part in the decision-making process. Related to this latter aspect the Act particularly regulates that the members of the Council of Ministers are entitled to equal rights in making the corporative kind of decisions. Moreover we call for attention concerning the relation of the ministers to the *governmental commissions*. Their operational rules emphasize that the ministers may take proposals agains the decisions of the governmental commissions at the joint sessions of the Council of Ministers.

Beyond the mentioned regulations we have to refer to the rules concerning the agenda of the Council of Ministers, which ascertains detailed prescriptions on the requirements of the proposals to be submitted to the Council of Ministers, on the harmonisation procedure, the report obligation of the ministers and other questions related to the mechanism of the governmental work. It is reasonable to call for attention to the fact that the leaders of the Council of Ministers (Prime Minister, Deputy Prime Ministers) provide supervision tasks on the activities of the ministers, although the content elements and procedural order of this control activity have not been regulated yet. After the overview of the valid regulation that question appears, which are those most important features, which appear in the relation system between the minister and the Council of Ministers? In order to give answer to this question we have to consider multiple connections. One of the aspects is namely that partly the minister as the member of that entity has responsibility for the activity of the government, on the other hand he owes responsibility to the Council of Ministers as the leader of the given branch for the accompishment of those tasks, cases which belong to this competence sphere, for the fulfilment of obligations and responsibilities, i. e. for the management of the given branch of public administration. This two-way responsibility form is closely connected to that responsibility which is realized in the preparation of decisions and their implementation. The problem of preparation and implementation of decisions appears not only towards the entity of the Council of Ministers but towards the *governmental commissions* as well. Finally — as we mentioned we have to examine the questions of relation between the leaders of the government (Prime Minister, Deputy Prime Ministers) and the ministers, particularly stressing the content elements and order of the *supervision* function.

a) Cnncerning the relation of the minister to the Council of Ministers that constitutional line has a fundamental importance that the *Council of Ministers* guides, *manages* the activities of the ministries and this way the leaders of the ministries, the ministers too. This aspect of the activity of the Council of Ministers is that this way the harmonized activity of the public administrative organs should be ansured first of all and this way the management activity inside the system of public administration relati-

vely separated from the governmental activities of the Council of Ministers, which prevails not only inside the state administration, but in the society as a whole as well. If we survey the management activities of the Council of Ministers towards the ministries, it can be said generally that this management activity contains both *theoretical* and *operative* elements. Approaching the question from the substantial side, within the activity of the Council of Ministers towards the ministers those elements relatively well can be recognized which are generally the main content elements of managerial and administrative activities: among them the gathering of information, the co-ordination, the decision and control elements could be emphasized particularly. Without a detailed examination of the manegement activity of the Council of Ministers according to the mentioned aspects we only refer to the fact that in the management activity the weight and role of theoretical and operative elements usually show various picture, even more, it seems, that today the operative element rather dominatesit compared to the theoretical kind of management activities. Although considering the important characteristics of the different development periods, the emergence of the actual situation it would be difficult to give once and forever a given ratio for the theoretical and operative management elements, however, according to our opinion today we have to emphasize that by the reduction of operative elements the theoretical and conceptional element should prevails much more strongly than it does today in the management activities of the government towards the ministries, naturally the operative management elements should not be eliminated altogether.

The other characteristic feature of the management activities of the Council of Ministers towards the ministries that the tasks, functions and licences of the managerial activities have not been regulated yet. Considering the concent elements of the management competence sphere of the Council of Ministers which prevail in this relation the appropriate parts of the Constitution and some more concrete rules of each branch and activity sphere prevail. Following this method of regulation it would be extremely hard to list even approximately those concrete licences which belong to the Council of Ministers from this view. However, this circumstance makes difficult to answer that general kind of question: where is the end of the management competence sphere of the Council of Ministers and in this relation where should be drawn the limits and framework of the actual ministerial independence? Although the rules concerning the responsibilities and competence sphere of the minister give some idea on the extent of ministerial independence, however, it seems that today it is urgent to draw more precise limits on the management of the Council of Ministers and ministerial independence. Among others this would have be important from the aspect of the efficiency of the management as well as the more unambiguous prevalence of responsibilty. The requirement of such general regulation also supports and justifies the creation of a new act on the *Council of Ministers*, in which both the most important elements of the management activities of the Council of Ministers and the main rules of the ministerial sphere of competence and independence could be prescibed.

We note that the application of such a solution would require the comprehensive overhaul of the multi-grade law regulation material concerning the ministerial sphere of competence too. As it is known the regulations concerning the tasks and competence sphere of the minister can be found mainly in the constitutional rules and the so-called branch legislation, e. g. the construction act, the education act and the 46/1978 MT decree or the Council of Ministers on the economic branch management and the resolution by the Council of Ministers which was adapted in March 1985 and prescribes the tasks and responsibilities of the ministers. This multi-grade regulation scheme, which contains the possibilities of collision or even contradictions, should be updated urgently. This task would be accomplished by the adaptation of a special law regulation or by the mentioned act on the Council of Ministers.

b) In the relation system between the minister and the Council of Ministers a further important problem is the connection between the *ministers and the governmental commissions.* According to our opinion in the past probably the most problem have appeared in this sphere of management concerning both the ministerial independence and the operation of the Council of Ministers as an entity. Therefore it is reasonable to go into details in this question. It is reasonable despite the fact that the revision of the system of economic governmental commissions and the new regulationog their tasks and competence spheres in January 1985 obviously meant a remarkable progress forwards compared to the previous situation.

As it is known the legal ground for establishing governmental commissions is determined by the constitution. Due to the 1972 amendment of our constitution it authorizes the Council of Ministers to create governmental commissions to fulfill certain tasks. (§. 40/1). We have to mention that – though earlier the constitution have not regulated the establishment of governmental commissions – the Council of Ministers have operated governmental commissions before the constitutional amendment of 1972 too.

Before 1956 the plenary session of the Council of Ministers had an institutionalized *presidium*, which resulted a certain distribution of workload between the plenary session of the Council of Ministers and its presidium. Considering that the presidium dealt with several cases of operative nature, the need was necessarily smaller for the operation of governmental commissions. Thus in this period actually only *two,* actual governmental commission in the contemporary sense have operated beside the Council of Ministers, namely the *Defense Committee* and the *Commission of Economic Relations.* The operational field of the former was actually similar to the recent Defense Committee, the latter accompished tasks connected to the international economic co-operation. After 1956 in the corporative operation of the Council of Ministers such a need took shape that the *preparation* arrangements of the economic proposals should be more professional and better founded. For the aim of ensuring this at the end of 1956 the *Economic Commission* of the Council of Ministers has been created, its main task has been the *preliminary discussion* of the economic proposals to be sub-

mitted to the plenary session of the Council of Ministers. Meanwhile the *Commission of Economic Relations* has ceased to exist and its sphere of activity was taken over by the *Economic Commission*. After a relatively short time in 1959 for the management and co-ordination of international economic relations the Council of Ministers has established the *Commission of International Economic Relations*. Till 1969, when the *Scientific Political Commission* has been created beside the Council of Ministers the mentioned governmental commissions operated.

In this stage of development the main characteristics of the regulation of the activities and operation of governmental commission can be summarized as follows: in the operation of governmental commissions the *preparative, evauative and co-ordinative activity prevailed, the founding regulations have not authorized the commissions with direct rights to formulate decisions*. Their competence in decisions have gradually developed. The independent sphere of decisions took shape at first in 1969 in the founding documents of the *Commission of Scientific Policy*. Accordingly the co mmissi-on may decide in its sphere of competence obligatory way for the ministers and the heads of organs with national competence. The independent decision sphere of the governmental commissions took shape in the later and contemporary law regulations concerning the tasks and competence spheres of govern mental commissions.

Recently the tasks and competence spheres of governmental commissi-on are settled by the following laws:

The Council of Ministers has created the *State Plan Commission* by its resolution 1023/1973. (VI. 30.) Mt. h. The tasks and responsibilities of this commission are prescribed by the resolution 1007/1987. (I. 15.) Mt. h.

In 1980 the Commission of International Economic Relations has been terminated and the *Economic Commission* has been established. In 1987 the Economic Commission has ceased to exist and once again the Commission of International Economic Relations was set up and the *Economic Supervision Commission of the Council of Ministers* was created. The tasks and competence of the former has been settled by the resolution 1009/1978. (I. 15.) Mt., the latter by the 1008/1987. (I. 15.) Mt.

According to the regulations of the Act II of 1976 on national defense the Council of Ministers fulfills its duties concerning the defense matters by the *Defense Commissions* in a previously settled sphere.

In 1978 the Council of Ministers has regulated once again the tasks and competence sphere of the *Commission of Scientific Policy* created in 1969 by its resolution 1016/1978. (VI. 10.) Mt. h. This law has been amended at last in December 1985.

The main features of the legal status of governmental commissions can be summarized as follows:

The governmental commissions are established by the Council of Ministers, they are responsible for their activities and decisions to the Council of Ministers. They possess decision competence in the sphere transferred to them by the Council of Ministers.

Actually the content of their competence has three main directions:

– the *preliminary discussion and evaluation* of the proposal to be submitted to the Council of Ministers;

– decision-making (decisions and standpoints in the transferred sphere of competence);

– surveillance and control of the implementation of the decisions taken by the Council of Ministers in those areas which are connected to their sphere and tasks.

A problem which is connected to the decision competence of the governmental commissions is the place of the *governmental commission decisions in the legal system* (resolutions). The first question is whether they should be considered as legal sources or not?

Examining this problem we have to start from the fact that the resolutions of the governmental commissions are not qualified as legal sources by the constitution and the laws concerning the proclamation of legal sources. [Law Decree 1974.24 and the resolution 1063/1974. (XII. 30.) Mt. h.] therefore they do not contain any rule on their proclamation. Followingly the resolutions of the governmental commission – according to our opinion – are not legal sources, but they should be taken as *means* of governmental management activities.

There is a further problem, namely *for whom and for which field* the resolutions of *governmental commissions* are obligatory and how they should be *proclaimed?* Concerning the sphere of obligations the recent legal rules do not contain unambiguous rules on that matter. Therefore according to the law regulation which determines the tasks and competence spheres of these governmental commissions with economic profile the commissions may take decisions in a transferred competence sphere and these decisions do not involve the competence and responsibility of the ministers (heads of organs with national competence). The law regulation related to the tasks and responsibilities of the Commission of Scientific Policy rules about obligations concerning ministers and national organs. Beyond this, not quite unambiguous regulation it is not quite clear who should be considered "authorities" and especially "other" organs? The clear formulation of these problems is essential, because the uncertainty of the possible addresses can adversely influence the implementation of the decisions concerned.

Connected to the latter there is the problem of *proclamation* of the resolution of governmental commissions. Putting aside some rare exceptions the resolutions of governmental commissions do not appear in the official bulletins, but the interested parties receive them directly. According to our opinion a problematic aspect of the relation between the minister and the governmental commissions is the certain *organisational* and *competence exaggeration* of the governmental commissions. The latter is especially can be observed if we approach the problem from the aspect of economic governmental commissions, whereas we have mentioned – recently three governmental commission operate in the economic governmental management. This fact by itself makes difficult the guidance of the operations

of the governmental commissions and their harmonisation, it could lead to the emergence of parallel measures, it can yield collision fields and contradictions as well.

As far as the oversized competence is concerned the latter may become an initiator of several problems indeed. E. g. it may strengthen the centralisation efforts in the decision-making process, it may lead to a multigrade or even parallel decision centres. The relatively wide decision sphere of the governmental commissions can adversely influence the institution of ministerial independence and responsibility, as even in such questions they require governmental commission decisions, where the leader of the managing organ can decide independently in the framework of his competence and responsibility or the decision could be done in the framework of the direct relations among the managing organs.

A further problem that the *control function to be fulfilled in the competence of deputy prime minister is not separated properly from the governmental commission presidential function*, namely it may cause collisions in the management work. Today actually the deputy prime ministers fulfill the presidential functions of the governmental commissions. Aiming the increase of the efficiency of the management work and the requirement of ministerial independence and responsibility, according to our view particularly the following ideas deserve attention:

The recently existing *oversized organisation and competence* should be re-examined and eliminated.

In the course of this process the following outlines would be reasonable to introduce:

– corporative responsibility of the Council of Ministers should be ensured concerning all items in its competence;

– the ministerial responsibility and independence should prevail consequently, the responsible decision of the leaders should be a co-ordinated effort in such inter-branch problems, which do not require governmental decision;

– the further decentralisation process of decision competence should be strengthened, that principle should prevail that the resolutions and measures should be taken there where the informations are available the most, the conditions of implementation can be assessed at best and the responsibility can be called unambiguously;

– the existing parallel operations, the multi-grade and occasionally repeated decisons should be eliminated;

– the general principle should be that in the operation of governmental commissions the preparative, evaluative, co-ordinative and control activities should have basic and determinative role;

– it should be clearly stated that the decisions of governmental commissions are not legal sources;

– the competence spheres and responsibilities of the presidents of the commissions should be drawn more clearly; consequently the function of the deputy prime minister as supervisor should be separated from the functions of the president of the governmental commission;

– aiming the long-term development aims as an alternativ proposal it would be reasonable to examine the possibilities of creating and operating a smaller cabinet (presidium) inside the Council of Ministers.

c) In the survey of the connection between the Council of Ministers and the minister there is a separate question, namely the development of the relation between the minister and the senior officials of the Council of Ministers (prime minister, deputy prime ministers). As it is known, neither the Constitution, nor the other legislative pieces determine any mechanical relation of sub- and supra-ordination between the senior officials of the Council of Ministers and the ministers. Recently the constitutional situation is that the members of government possess equal rights and duties, i. e. actually the prime minister is "primus inter pares", first among equals. This can be stated even considering that according to the Constitution the prime minister "leads the sessions of the Council of Ministers and takes care of the implementation of the decrees and resolutions of the Council of Ministers. "This way he necessarily fulfills certain activities of orientation, co-ordination. Concerning the legal status of the deputy prime minister the Constitution does not prescribe any difference between their legal status and the ministers.

However in the practice a certain kind of *control* function has developed to the ministers on behalf of the senior officials of the Council of Ministers, its main contents and organisational order are determined by the statutes of the *Council of Ministers*. Surveying the content elements of the control function it can be established that it is connected to the submission of the work agenda of the Council of Ministers and the proposals and even to the release of ministerial level legal regulations as well.

Considering the emphasis on the ministerial independence and responsibility the question emerges: what kind of modernisation meeds can be formulated in this aspect ?

First of all, in an adequate level legislative rule the legal status of the senior officials of the Council of Ministers (prime minister and deputy prime ministers) should be regulated, concerning the supervision functions to be fulfilled. It should be stressed as the main principle that this supervision does not mean certain trusteeship, detailed intervention into the ministerial activities, but basically such *co-ordinative and harmonizing* activity is needed, which is based on the observance of the aspects of the *full government*. Furthermore a stand should be taken in the question too how far this supervision should have an *organisational* direction (as it is today), or a supervision based on the principle of *activity*, or eventually certain combination of both. By all means it seems that the recent supervision of very strongly organisational character is not satisfactory in every aspect.

d) An important element of the governmental system of relations of the ministerial activities is the participation of the minister in the *preparation and implementation of governmental resolutions*. The minister and the ministry led by him take part in the preparation of governmental resolutions in several ways and with several methods. It is especially reasonable to mention the professional preparation of the draft copy of proposals, the

right of proposal initiating some decision and give opinion on some proposal. Naturally the participation in the preparation of decisions includes the features too that the minister stresses or represents the special arguments and interests of the public administrative branch led by him in the course of taking governmental decisions. As it is known the obligation of the minister to participate in the preparation of resolutions and their representation is determined by the work plan of the Council of Ministers and the work plan of the governmental commissions. Moreover the minister is entitled to initiate preparation of proposals aiming resolution beyond the prescription of the work plan too. Furthermore the minister participates in the preparation activities of the resolutions with the right of evaluation, primarily in the framework of the so-called system of harmonization as the proposal to be worked out is related to his *tasks*. We have to mention that the comprehensive regulation of this harmonization mechanism (except the statutes of the Council of Ministers) has not taken place yet. According to our view the recent regulation of harmonization has a too general character, it gives too much possibility for the discretionary or even subjectiv determination of those persons involved in the harmonization procedure. Consequently it would be reasonable to summarize the most basic proposals of the procedure of preparation of proposals in a law regulation.

A further problematic feature of the ministry-level preparation of resolutions is that it is ruled by an official apparatus which operates in the system of hierarchic relations to an extent which is more than desired and such way the partipation of the entities in the preparation of decisions, resolutions prevails only a limited way. A certain overweight of the official apparatus is related to the fact too that today less than justified possibility is available to get through the professional and scientific views to an appropriate extent which is free from the official hierarchy aspects. Followingly is should be ensured that the entities and the representatives of science are given a more substantial role in the wide-scale and comprehensive preparation of decisions. The alternatives and institutional forms of such participation should be worked out.

The ministers and their ministries play significant role in the *implementation of governmental decisions*. Actually the role of ministries in the implementation of resolutions has a dual character: on one hand, they directly organize the implementation, on the other hand they inform the government and its committees on the situation of the implementation of their resolutions.

The successful implementation of decisions depend on several factors. In this field the evaluation and guarantee of the proper *conditions* of implementation have a decisive importance. It seems that this is one of the most sensitive points in the implementation of the governmental decisions too. The experiences refer to the fact that the lack of implementation or the improper implementation in several cases is related to the inadequate conditions and their complete omission. In a given case both material and organisational and personal conditions are included among the conditions of implementation, although in actual cases the role and importance of

the mentioned conditions can be different indeed. It appears as a task in the organisation of implementation to separate properly the sphere of competence and tasks of the government, the governmental commissions, the senior official of the government and the ministers, the elimination of the possible parallel procedures. A further aim is to appoint the co-ordinator who is responsible for the implementation in case of complex inter-branch affairs, to make available the detailed information for the workout of the decisions to those persons who implement them, the more effective operation of the feedback of the experiences of implementation to the decision-taking mechanism and the modernisation of the responsibility system.

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ИНСТИТУТ МИНИСТРА И ЕГО СВЯЗЬ С ПРАВИТЕЛЬСТВЕННОЙ СФЕРОЙ В ВЕНГРИИ

ЛАЙОШ ФИЦЕРЕ

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Работа рассматривает общие тенденции развития одного из основных институтов государственного механизма и государственного управления, института министра, а также на основе регулирования и практики в Венгрии его связь с правительственными органами.

Статья подробно анализирует факторы, определяющие самостоятельность министра, особенно влияние политических партий на эту самостоятельность. Статья занимается типами ответственности министра (политическая, юридическая ответственность и ответственность за результативность деятельности), а также организационными аспектами института министра, обращая особое внимание на роль

различных консультативных механизмов, действующих в системе руководства министерствами.

Во второй части статьи рассматриваются связь министра с Государственным Собранием, с Президиумом Республики, а также с правительством и правительственными комиссиями. На основе критического анализа венгерского регулирования и практики работа сформулирует ряд предложений, направленных на совершенствование иногда противоречивого положения в данной области, а также дальнейшее развитие правового регулирования такой связи.

DIE INSTITUTION DES MINISTERS UND SEINE REGIERUNGSBEZIENUNGEN IN UNGARN

von

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Die Abhandlung untersucht die allgemeinen Entwicklungstendenzen einer der grundlegenden Institution des staatlichen Mechanismus und der verwaltung: der Institution des Ministres und seine Beziehungen zu den Regierungsorgane auf Grund der ungarischen Regelung und Praxis.

Ausführlich behandelt der Verfasser die die Selbsständigkeit des Ministers bestimmenden Faktoren, besonders die Einflüsse der politische Parteien auf den Spielraum des Ministers. Er analysiert die Typen der Verantwortlichkeit des Ministers (politische, juristische und Ergebnisverantwortlichkeit) und die organisatorischen Bezugnahmen der Institution des Ministers, mit besonderer Hinsicht auf die Rolle der beratenden Körperschaften und konsultativen Mechanismen in der Leitung des Ministeriums.

Der zweite Teil der Abhandlung untersucht die Beziehung des Ministers zu dem Landestag, Präsidialrat, Ministerrat und zu den Regierungsausschüssen. Der Verfasser formuliert zahlreiche Vorschläge, – auf Grund der kritischen Bewertung der ungarischen Regelung und Praxis – für die Lösung der heutigen, gelegentlich widerspruchsvollen Lage, einschließlich auch die Fortentwicklung der rechtlichen Regelung.